

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
	)	CRIMINAL NO.
	)	04-CR-10166(RGS)
v.)	
	)	VIOLATIONS:
(1) DAVID CARL ARNDT)	
and	)	21 U.S.C. § 846 -
(2) DONALD BING MCGILVRAY	)	Conspiracy To Distribute
	)	And To Possess With
	)	Intent To Distribute
	)	Methamphetamine
)	
	)	21 U.S.C. § 841(a)(1) -
	)	Possession Of
	)	Methamphetamine With
	)	Intent To Distribute
)	
	)	18 U.S.C. § 2--Aiding
	)	And Abetting
)	
	)	21 U.S.C. § 841(a)(1) -
	)	Distribution of
	)	Oxycodone
)	
	)	21 U.S.C. § 853 -
	)	Forfeiture Allegation
)	

SUPERSEDING INDICTMENT

Count One: (21 U.S.C. § 846 - Conspiracy To Distribute And To Possess With Intent To Distribute Methamphetamine).

The Grand Jury charges that:

Beginning at a time unknown to the Grand Jury, but at least by in or about April 2003 and continuing thereafter to on or about August 8, 2003, at Boston, and elsewhere in the District of Massachusetts, in the Southern District of New York, and

elsewhere,

(1) DAVID CARL ARNDT,

defendant herein, did knowingly and intentionally combine, conspire, confederate, and agree with other persons, known and unknown to the Grand Jury, to distribute, and to possess with intent to distribute, methamphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

The Grand Jury further charges that the conspiracy involved 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine. Accordingly, 21 U.S.C. §841(b)(1)(A)(viii) is applicable to this count.

All in violation of Title 21, United States Code, Section 846.

Count Two: (21 U.S.C. § 841(a)(1) - Possession of
Methamphetamine with Intent to Distribute;
18 U.S.C. § 2--Aiding And Abetting).

The Grand Jury further charges that:

On or about August 8, 2003, at Boston, in the District of
Massachusetts, and elsewhere,

(1) DAVID CARL ARNDT,
and
(2) DONALD BING MCGILVRAY,

defendants herein, did knowingly and intentionally possess
methamphetamine, a Schedule II controlled substance, with intent
to distribute.

The Grand Jury further charges that the offense involved
50 grams or more of methamphetamine. Accordingly, 21 U.S.C.
§ 841(b)(1)(A)(viii) is applicable to this count.

All in violation of Title 21, United States Code, Section
841(a)(1).

Count Three: (21 U.S.C. § 841 - Distribution Of Oxycodone)
18 U.S.C. § 2--Aiding And Abetting).

The Grand Jury further charges that:

On or about October 10, 2001, at Boston, in the District of
Massachusetts,

(1) DAVID CARL ARNDT,

defendant herein, did knowingly and intentionally distribute a
quantity of oxycodone, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Section
841(a)(1), and Title 18, United States Code, Section 2.

Count Four: (21 U.S.C. § 841 - Distribution Of Oxycodone)
18 U.S.C. § 2--Aiding And Abetting).

The Grand Jury further charges that:

On or about January 24, 2002, at Boston, in the District of
Massachusetts,

(1) DAVID CARL ARNDT,

defendant herein, did knowingly and intentionally distribute a
quantity of oxycodone, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Section
841(a)(1), and Title 18, United States Code, Section 2.

Count Five: (21 U.S.C. § 841 - Distribution Of Oxycodone)
18 U.S.C. § 2--Aiding And Abetting).

The Grand Jury further charges that:

On or about January 26, 2002, at Boston, in the District of
Massachusetts,

(1) DAVID CARL ARNDT,

defendant herein, did knowingly and intentionally distribute a
quantity of oxycodone, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Section
841(a)(1), and Title 18, United States Code, Section 2.

Count Six: (21 U.S.C. § 841 - Distribution Of Oxycodone)
18 U.S.C. § 2--Aiding And Abetting).

The Grand Jury further charges that:

From on or about January 24, 2002 to on or about January 31, 2002, at Boston, in the District of Massachusetts,

(1) DAVID CARL ARNDT,

defendant herein, did knowingly and intentionally distribute a quantity of oxycodone, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Count Seven: (21 U.S.C. § 841 - Distribution Of Oxycodone)
18 U.S.C. § 2--Aiding And Abetting).

The Grand Jury further charges that:

From on or about March 23, 2002 to on or about March 25,
2002, at Boston, in the District of Massachusetts,

(1) **DAVID CARL ARNDT,**

defendant herein, did knowingly and intentionally distribute a
quantity of oxycodone, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Section
841(a)(1), and Title 18, United States Code, Section 2.

Count Eight: (21 U.S.C. § 841 - Distribution Of Oxycodone)
18 U.S.C. § 2--Aiding And Abetting).

The Grand Jury further charges that:

From on or about April 12, 2002 to on or about April 17,
2002, at Boston, in the District of Massachusetts,

(1) DAVID CARL ARNDT,

defendant herein, did knowingly and intentionally distribute a
quantity of oxycodone, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Section
841(a)(1), and Title 18, United States Code, Section 2.

Count Nine: (21 U.S.C. § 841 - Distribution Of Oxycodone)
18 U.S.C. § 2--Aiding And Abetting).

The Grand Jury further charges that:

On or about May 17, 2002, at Boston, in the District of
Massachusetts,

(1) DAVID CARL ARNDT,

defendant herein, did knowingly and intentionally distribute a
quantity of oxycodone, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Section
841(a)(1), and Title 18, United States Code, Section 2.

FORFEITURE ALLEGATION
(21 U.S.C. § 853)

The Grand Jury further charges that:

1. As a result of the offenses alleged in Counts One through Nine of this Indictment, the defendant,

(1) DAVID CARL ARNDT,

and as a result of the offenses alleged in Count Two of the indictment, the defendant,

(2) DONALD BING MCGILVRAY,

shall forfeit to the United States any and all property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as a result of such offenses; and/or any property used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violations.

2. If any of the property described in paragraph 1 above, as a result of any act or omission of the defendant,

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intention of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendant up to the value of the property described in paragraph 1.

All in violation of Title 21, United States Code, Section 853.

NOTICE OF ADDITIONAL FACTORS

The Grand Jury further charges that:

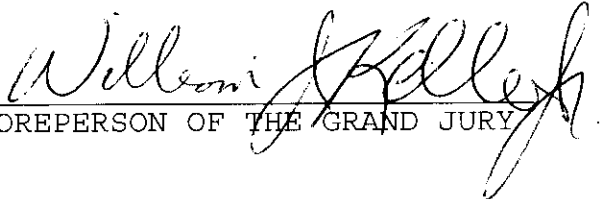
1. As to Count I, the defendant **DAVID CARL ARNDT** is accountable for at least 1.5 kilograms, but less than 5 kilograms, of methamphetamine. Accordingly USSG §2D1.1(c)(3) applies to this defendant.


2. As to Count II, the defendant **DAVID CARL ARNDT** is accountable for at least 500 grams, but less than 1.5 kilograms, of actual methamphetamine and at least 500 grams but less than 1.5 kilograms of "Ice." Accordingly USSG §2D1.1(c)(2) applies to this defendant.

3. As to Counts III-IX, the defendant **DAVID CARL ARNDT** is accountable for a quantity of oxycodone that, when converted to marijuana as provided by USSG §2D1.1 (drug equivalency table), is equivalent to at least 100 kilograms, but less than 400 kilograms, of marijuana. Accordingly, USSG §2D1.1(c)(7) applies to this defendant.

4. As to Count II, the defendant **DONALD BING MCGILVRAY** is accountable for at least 500 grams, but less than 1.5 kilograms, of actual methamphetamine and at least 500 grams but less than 1.5 kilograms of "Ice." Accordingly USSG §2D1.1(c)(2) applies to this defendant.

A TRUE BILL


FOREPERSON OF THE GRAND JURY


CYNTHIA W. LIE
JOHN A. WORTMANN, JR.
ASSISTANT U.S. ATTORNEY

DISTRICT OF MASSACHUSETTS: October 28, 2004.

Returned into the District Court by the Grand Jurors and
filed.

DEPUTY CLERK

AO 442 (Rev. 5/93) Warrant for Arrest

United States District Court

DISTRICT OF Massachusetts

UNITED STATES OF AMERICA

WARRANT FOR ARREST

v.

Donald Bing McGilvray

CASE NUMBER: 04-CR-10166-RGS

To: The United States Marshal
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest Donald Bing McGilvray
Name

and bring him or her forthwith to the nearest magistrate judge to answer a(n)

☐ Indictment ☐ Information ☐ Complaint ☐ Order of court ☐ Violation Notice ☐ Probation Violation
Petition

charging him or her with (brief description of offense)
Possession of Methamphetamine with Intent to Distribute

in violation of
Title 21 United States Code, Section(s) 841(b)(1)(A)(viii)

Name of Issuing Officer

Title of Issuing Officer

Signature of Issuing Officer

Date and Location

Bail fixed at \$ _____ by _____
Name of Judicial Officer

RETURN

This warrant was received and executed with the arrest of the above-named defendant at _____

DATE RECEIVED

NAME AND TITLE OF ARRESTING OFFICER

SIGNATURE OF ARRESTING OFFICER

DATE OF ARREST

AO 442 (Rev. 5/93) Warrant for Arrest

THE FOLLOWING IS FURNISHED FOR INFORMATION ONLY:

DEFENDANT'S NAME: Donald Bing McGilvray

ALIAS:

LAST KNOWN RESIDENCE: 237 Parsons Street, Brighton, MA 02135

LAST KNOWN EMPLOYMENT:

PLACE OF BIRTH:

DATE OF BIRTH (4 digit year): 00-00-1954

SOCIAL SECURITY NUMBER (last 4 digits only): 000 - 00 - 2066

HEIGHT:

WEIGHT:

SEX: M

RACE: W

HAIR:

EYES:

SCARS, TATTOOS, OTHER DISTINGUISHING MARKS:

FBI NUMBER:

COMPLETE DESCRIPTION OF AUTO:

INVESTIGATIVE AGENCY AND ADDRESS: FBI / USPS / DEA

JS 45 (5/97) - (Revised USAO MA 1/15/04)

Criminal Case Cover Sheet**U.S. District Court - District of Massachusetts**Place of Offense: Massachusetts Category No. II Investigating Agency DEA/FBI/POSTALCity Boston Related Case Information:County Suffolk Superseding Ind./ Inf. YES Case No. 04CR10166RGS
Same Defendant X New Defendant _____
Magistrate Judge Case Number _____
Search Warrant Case Number 03-894-MBB
R 20/R 40 from District of _____**Defendant Information:**Defendant Name David Carl Arndt Juvenile ☐ Yes ☒ No

Alias Name _____

Address 26 Rutland Square, Apartment #3, Boston, MassachusettsBirth date (Year only): 1960 SSN (last 4 #): 7160 Sex M Race: _____ Nationality: _____Defense Counsel if known: Stephen Delinsky Address: Eckert Seamens
1 INTERNATIONAL PLACE BOSTON

Bar Number: _____

U.S. Attorney Information:AUSA Cynthia W. Lie Bar Number if applicable _____Interpreter: ☐ Yes ☒ No List language and/or dialect: _____Matter to be SEALED: ☒ Yes ☒ No☒ Warrant Requested ☐ Regular Process ☐ In Custody**Location Status:**Arrest Date: 5/28/04☒ Already in Federal Custody as 5/28/04 in US Marshals☐ Already in State Custody _____ ☐ Serving Sentence ☐ Awaiting Trial☐ On Pretrial Release: Ordered by _____ on _____Charging Document: ☐ Complaint ☐ Information ☒ IndictmentTotal # of Counts: ☐ Petty _____ ☐ Misdemeanor _____ ☒ Felony 3

Continue on Page 2 for Entry of U.S.C. Citations

☒ I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.Date: 10/28/04 Signature of AUSA: 

JS 45 (5/97) - (Revised USAO MA 3/25/02) Page 2 of 2 or Reverse

District Court Case Number (To be filled in by deputy clerk): _____

Name of Defendant _____

U.S.C. Citations

	<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count Numbers</u>
Set 1	<u>Consp. dist. over 500 grams meth</u>	<u>21 U.S.C. § 846</u>	<u>1</u>
Set 2	<u>PWID over 50 grams actual meth</u>	<u>21 U.S.C. § 841</u>	<u>2</u>
Set 3	<u>distribtion oxycodone</u>	<u>21 USC § 841</u>	<u>3</u>
Set 4	<u>distribtion oxycodone</u>	<u>21 USC § 841</u>	<u>4</u>
Set 5	<u>distribtion oxycodone</u>	<u>21 USC § 841</u>	<u>5</u>
Set 6	<u>distribtion oxycodone</u>	<u>21 USC § 841</u>	<u>6</u>
Set 7	<u>distribtion oxycodone</u>	<u>21 USC § 841</u>	<u>7</u>
Set 8	<u>distribtion oxycodone</u>	<u>21 USC § 841</u>	<u>8</u>
Set 9	<u>distribtion oxycodone</u>	<u>21 USC § 841</u>	<u>9</u>
Set 10	_____	_____	_____
Set 11	_____	_____	_____
Set 12	_____	_____	_____
Set 13	_____	_____	_____
Set 14	_____	_____	_____
Set 15	_____	_____	_____

ADDITIONAL INFORMATION: _____

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Same Defendant _____ New Defendant X
Magistrate Judge Case Number _____
Search Warrant Case Number 03mb894MBB
R 20/R 40 from District of _____**Defendant Information:**Defendant Name Donald Bing McGilvray Juvenile ☐ Yes ☒ No

Alias Name _____

Address 237 Parsons Street, Brighton, MA 02135Birth date (Year only): 1954 SSN (last 4 #): 2066 Sex M Race: W Nationality: USADefense Counsel if known: Michael W. Reilly Address: Two Center Plaza
Boston MA 02108

Bar Number: _____

U.S. Attorney Information:AUSA Cynthia W. Lie Bar Number if applicable 18411Interpreter: ☐ Yes ☒ No List language and/or dialect: _____Matter to be SEALED: ☐ Yes ☒ No☒ Warrant Requested☒ Regular Process☐ In Custody**Location Status:**

Arrest Date: _____

☐ Already in Federal Custody as _____ in _____☐ Already in State Custody _____ ☐ Serving Sentence ☐ Awaiting Trial☐ On Pretrial Release: Ordered by _____ on _____Charging Document: ☐ Complaint ☐ Information ☒ IndictmentTotal # of Counts: ☐ Petty _____ ☐ Misdemeanor _____ ☒ Felony 3

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JS 45 (5/97) - (Revised USAO MA 3/25/02) Page 2 of 2 or Reverse

District Court Case Number (To be filled in by deputy clerk): _____

Name of Defendant Donald Bing McGilvray

U.S.C. Citations

	<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count Numbers</u>
Set 1	<u>21 USC 841</u>	<u>Distribution of Methamphetamine</u>	<u>II</u>
Set 2	_____	_____	_____
Set 3	_____	_____	_____
Set 4	_____	_____	_____
Set 5	_____	_____	_____
Set 6	_____	_____	_____
Set 7	_____	_____	_____
Set 8	_____	_____	_____
Set 9	_____	_____	_____
Set 10	_____	_____	_____
Set 11	_____	_____	_____
Set 12	_____	_____	_____
Set 13	_____	_____	_____
Set 14	_____	_____	_____
Set 15	_____	_____	_____

ADDITIONAL INFORMATION: